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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,241	01/14/2002	Matthias Bratz	42044 Cont.	1890
26474 7590 08/21/2008 NOVAK DRUCE DELUCA + QUIGG LLP 1300 EYE STREET NW SUITE 1000 WEST TOWER WASHINGTON, DC 20005				
EXAMINER				
QAZI, SABIHA NAIM				
ART UNIT		PAPER NUMBER		
1612				
MAIL DATE		DELIVERY MODE		
08/21/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/043,241

Applicant(s)

BRATZ ET AL.

Examiner

Sabiha Qazi

Art Unit

1612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-17, 19, 20 and 22-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 10-17, 19, 20 and 22-31 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/30/08 has been entered.

Claims 10-17, 19, 20 and 22-31 are pending. New claims 24-31 are added. Claim 10 is amended.

Election/Restriction

37 CFR 1.141

Different inventions in one national application.

Two or more independent and distinct inventions may not be claimed in one national application, except that more than one species of an invention, not to exceed a **reasonable number**, may be specifically claimed in

different claims in one national application, provided the application also includes an allowable claim generic to all the claimed species and all the claims to species in excess of one are written in dependent form (§ 1.75) or otherwise include all the limitations of the generic claim.

37 CFR 1.146. Election of species

If an application contains claims directed to more than a reasonable number of species, the examiner may require restriction of the claims to not more than a reasonable number of species before taking further action in the application. Where an application includes claims directed to different embodiments or species that could fall within the scope of a generic claim, restriction between the species may be proper if the species are independent or distinct. However, 37 CFR 1.141 provides that an allowable generic claim may link a reasonable number of species embraced thereby.

Claims 10-17, 19, 20 and 22-31 generic to the following disclosed patentably distinct species:

The species are as follows:

- a) Thousands of compounds as sulfonylurea herbicide

- b) Thousand of compounds as an alkylpolyglycoside and
- c) Unlimited number of compounds as one or more further active compounds (optional).

The species are independent or distinct because as disclosed the different species have mutually exclusive characteristics for each identified species. In addition, these species are not obvious variants of each other based on the current record.

For example sulfonylurea herbicides in claim 10 include thousand of compounds (see for example some of them disclosed in claims 11 and 22); alkylpolyglycoside also includes thousand of compounds (some disclosed in claim 23). When component (c) is present it can be **any active compound except aminophosphoric acids**. Sulfonylurea as in claim 11 contains Z which represents C or N which is chemically and structurally different. When Z is C, the hetero ring is pyrimidine, when Z is N, hetero ring is 1, 3, 5 triazine which are not obvious over the each other and are completely different in all features. In addition they have large number of different substituents. Similarly J in claim 22 represents large number of heterocyclic groups which are structurally and chemically different and are

art recognized. Furthermore, a 5-membered ring is not the same as a pyridine ring. These are different species. Similarly 5-membered heterocyclic ring containing one nitrogen is not equivalent or obvious variant to a six-member heterocyclic ring containing one nitrogen. A pyrazole ring is not the same as pyridine ring. Sulfonylureas represent large number of different species.

Similarly alkylpolyglycoside contain large number of species. Further as component (3) it includes any active compounds which has no limit of species may contain millions of different species except one which is disclaimed.

Amended claim 10 is drawn to a solid mixture comprising a) a sulfonylurea herbicide, b) an alkylpolyglycoside, and c) optionally one or more further active compounds, with the proviso that said further active compound (c) is different from aminophosphoric acids.

Applicant is required, in reply to this action, to elect a single species of (1) a sulfonylurea herbicide (2) an alkylpolyglycoside and (3) if applicants

elect the 3rd optional component in the elected invention then one active compound.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species as cited above for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

Due to the complexity no call was made for election/restriction.

There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., in various cases searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species to be examined as cited above even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected species,

including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

The election of the species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

COMMUNICATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sabiha Qazi whose telephone number is (571) 272-0622. The examiner can normally be reached on any business day except Wednesday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Krass Frederick can be reached on (571) 272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sabiha Qazi/

Primary Examiner, Art Unit 1612